

REMARKS

Claims 1-11 and 13-26 are pending in this application. All were rejected under 35 USC §103(a) in view of the Keene and Whitesage publications. Applicant notes that the Whitesage application claims priority from a provisional application filed on April 4, 2000, and therefore that the earliest possible effective filing date for Whitesage is April 4, 2000. Applicant is submitting with this reply a declaration by the inventor, Antonio Nevarez, under 37 CFR §1.131 (Rule 131) establishing that the invention claimed in this application was conceived no later than January 21, 2000. Applicant also believes that the Rule 131 declaration, in combination with the explanatory comments below, shows diligence by Applicant from a point just prior to April 4, 2000, through June 15, 2000, the date on which the invention was constructively reduced to practice as a result of the filing of this application. Applicant submits, therefore, that the Whitesage patent is not prior art to this application and thus that it cannot be used in rejecting Applicant's claims.

The enclosed Rule 131 declaration shows that the inventor of the subject matter claimed in this application submitted a formal invention disclosure record (IDR) document to the NCR law department on January 21, 2000. Appendix A to the Rule 131 declaration is a copy of the IDR document and shows that the inventor had in fact conceived the claimed invention by that date.

Applicant's attorney John D. Cowart, who prepared this application on the inventor's behalf and who is the undersigned on this reply, routinely spends several (typically three to five) consecutive or near-consecutive days in: (1) reviewing the original IDR document submitted by the inventor(s) to the law department, (2) reviewing notes from initial discussions of the invention with the inventor(s), (3) creating a handwritten outline of the application's content, (4) drafting an initial set of claims, (5) preparing an initial set of figures with a computer-aided-drawing program, (5) preparing a Microsoft Word document that contains an initial draft of the specification using the initial set of figures as a guide, (6) revising the initial set of claims and adding additional claims to create a full set, (7) and revising the figures as necessary to correspond to the written specification. Mr. Cowart then typically prints a paper copy of the initial draft of the application to allow review and annotation of the content by hand, and then he revises

the initial draft application, including the claims and the figures, to create a "first draft" of the application, which he delivers to the inventor(s) for detailed review.

The Rule 131 declaration shows that Mr. Cowart delivered a first draft of the application to the inventor by e-mail on April 11, 2000. The declaration, including Appendix B, also shows that Mr. Cowart had prepared an initial draft of the application by April 6, 2000, and printed it for his review on that date. Mr. Cowart would have worked on this initial draft for several days leading up to April 6, 2000, and, given the amount of time required to prepare the initial draft, would have begun working on the application before April 4, 2000, the effective filing date of the Whitesage application.

The Rule 131 declaration also shows that: (1) The inventor reviewed and commented on the first draft of the application between April 11, 2000, and April 25, 2000, a period of only two weeks, and (2) Mr. Cowart reviewed the inventor's comments and revised the draft application accordingly between April 25, 2000, and June 9, 2000, a period of only six weeks. Mr. Cowart then filed the application less than a week later, on June 15, 2000.

The Rule 131 declaration therefore establishes that: (1) the invention claimed in this application was conceived on or before January 21, 2000, well before the effective filing date of the Whitesage publication, and (2) Applicant was diligent in reducing the claimed invention to practice from a time preceding the effective filing date of the Whitesage application through the application's filing date of June 15, 2000. Accordingly, the Whitesage publication is not prior art to this application, and it cannot be used in rejecting Applicant's claims. Applicant therefore asks the Office to reconsider this application and allow all the claims.

CONCLUSIONS

The prior art of record does not show or suggest the invention claimed by Applicant. Therefore, all of the claims are allowable. Applicant asks the Office to reconsider this application and allow all of the claims.

The Office is authorized to charge any fees that may be due, except for the issue fee, to deposit account 50-4370.

Respectfully,

A handwritten signature in black ink, appearing to read "John D. Cowart", with a long horizontal flourish extending to the right.

John D. Cowart
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